



CITY OF DANBURY

155 DEER HILL AVENUE
DANBURY, CONNECTICUT 06810

PLANNING COMMISSION

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MINUTES

APRIL 5, 2006

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The meeting was called to order by Chairman Arnold Finaldi Jr. at 7:30 PM.

Present were John Deeb, Arnold Finaldi Jr., Kenneth Keller, Edward Manuel and Alternate Joel Urice. Also present was Associate Planner Jennifer Emminger.

Absent were Matthew Kennedy and Alternate Paul Blaszk

Chairman Finaldi asked Mr. Urice to take Mr. Kennedy's place for tonight's agenda.

Mr. Deeb made a motion to accept the minutes of March 1, 2006. Mr. Keller seconded the motion and it was passed unanimously. Chairman Finaldi announced that they would be tabling the acceptance of the March 15, 2006 minutes as they are not ready tonight.

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PUBLIC HEARING:

7:30 PM – Blue Ribbon Development LLC – Application for (3) three-lot subdivision (1.17 acres) in the RA-8 Zone – “Jay 3 Subdivision” – 20 Deer Hill Ave. (#116106) – Subdivision Code #05-08.

Chairman Finaldi excused himself as he is abstaining from this matter. Vice-Chairman Keller took over as Chairman.

Attorney Carrie Larson from Cohen & Wolf PC, spoke in favor of this application. She submitted a letter from Attorney Neil Marcus but declined to read it into the record. She said this is the second application for subdivision of this property. The previous one was denied and is currently under appeal. She introduced Steve Sullivan, the PE from CCA. He said this proposal has three separate driveways instead of single driveway as proposed in the previous application and each driveway would have the curb cut apron as required. He said they also are proposing a speed bump be installed on Deer Hill Ave. He said the request for sewer and water extension is presently before the Common Council. Mr. Sullivan said he had received the Staff Report, and both the Traffic Engineer and Engineering comments. Mr. Keller asked how they decided where to put the speed bump. Mr. Sullivan said the location is flexible could be moved north or south and he agreed with the City Traffic Engineer that they would have to work with the City as to where it would be. Mr. Keller asked how far apart the two driveways are and Mr. Sullivan said there is a seven foot island between the driveways. Mr. Urice asked question referencing the previous application and Mr. Manuel said does not automatically become part of the record. Mr. Urice then asked how this application resolves the issues that

the previous denial was based on. Mr. Sullivan said the first and second issues were about the common driveway. Attorney Larson then said that they are open to flipping the location of the house and driveway for lot one to address the separation distance. Reasons three and four had to do with site distance issues- they believe they were addressed in both the first and the present application as they feel they satisfy the requirements. Reason five and six discuss trees on the neighbor's property to the north. They don't believe they have to address that since there is nothing in the Regulations that addresses trees. Jeff Davenport owns a tree pruning company and he has pruned back the roots so there is nothing on 20 Deer Hill. Issues seven and nine have not been addressed since they are not in the Regulations, so they do not feel they can be regulated. If there are archaeological issues on the site, they will hire an expert to deal with that. Reason eight was the three houses on one lot, they are prepare to put up fencing or shrubs to differentiate between the lots. Attorney Larson then submitted an excerpt from the City Transportation Plan. The letter from Attorney Marcus was designated Exhibit A and the excerpt from the Transportation Plan is Exhibit B. Mr. Manuel asked how wide the driveway aprons are and Mr. Sullivan said about 20 feet. Mr. Manuel said that is only a few feet longer than the average car and seems very tight. He then questioned how easily one could get out of the driveway. Mrs. Emminger said they need to add street trees need every fifty feet along the street line. Mr. Sullivan said they will correct the plan and add the trees where necessary. Mrs. Emminger said the speed bump does not resolve the issues of previous application and the City Traffic Engineer feels the same way. The City's position is that the current application does not resolve any of the issues from the previous denial, but it is up to the Commission to determine that. She added that the applicant's cutting the roots to a tree on the adjacent property is probably not a good idea. Mr. Manuel asked if the lot sizes are the same and Mrs. Emminger said they are exactly the same. Mr. Manuel questioned if they meet the minimum lot width and Mrs. Emminger said they do. There were no other questions at this time.

Mr. Keller asked if there was anyone to speak in opposition to this application.

Bob Talarico, 10 Deer Hill Ave., said he is directly next to this property. He added that although he is an Attorney with his office located on Deer Hill Ave., he is here tonight as a concerned Deer Hill Ave. resident. First, regarding the letter from Attorney Marcus, if the Commission chooses to hold public hearing they should be able to. He suggested the Commission refer this letter to Corporation Counsel. He also urged the Commission to incorporate the previous application into the record for this application. He then said that nothing the applicant has presented addresses the traffic issues; everything from the previous application regarding the traffic is the same. This application does not solve the site distance problem and a speed bump is a ludicrous proposal. He said that Deer Hill is also a major thoroughfare, and if you put a speed bump by Mr. Pane's property, the many fire trucks, ambulances and police cars would have to stop. In closing he said that this application has always had sight distance issues, but if this is approved, everyone will be coming in proposing speed bumps.

Kimberly Marcus, 72 Deer Hill Ave., said she is no relation to Attorney Marcus. She said it is stupefying that this proposal is before the Commission again. She asked what it will take to demonstrate to these developers that this is not something that belongs on Deer Hill Ave. They have shown their disrespect for both the neighbors and their efforts to maintain the neighborhood by pursuing this proposal despite the opposition. She questioned why anyone should trust the applicants when they have not been respectable landlords. She added that speed bumps and individual driveways are not the answer.

Bernie Pane, 28 Deer Hill Ave., thanked the Commission for their refusal to accept the previous debacle that the applicants had proposed. He questioned some of the notations on the map that was presented with this application. He said he had downloaded some info from the Internet about speed bumps and the one thing all of the documentation states is that speed bumps should not be used on streets that are traversed by emergency vehicles. He also mentioned that when people come racing down the road at these high speeds, often the hubcaps come flying off the car. He said he has often thought that someone could get hurt by one of these, especially the students from Immaculate High School or Rogers Park Middle School. He added that these children could be endangered by people not slowing down for the speed bump. He said regarding the Attorney's comments about the applicant doing the tree root pruning, he does not yet know how extensive the damage is to his trees. He submitted photos of the trench they dug out. This was designated Exhibit C. He continued saying that Academia has agreed that the height of the trees is directly proportional to the root system and it could take 3-5 years for this damage to show up. He said this ditch was dug on December 13, 2005, the roots were cut and then ditch was filled in. This was a criminal act. He said a responsible developer respects the neighborhood and protects the integrity of the area. A proposal should earn approval based on merits of the application, but they seem to be doing it based on litigation. Mrs. Emminger asked Attorney Larson if a grading permit was required based on work presented and she said she would address that in rebuttal.

Levi Newsome, 10 Terra Glen Rd., said he is here representing the Danbury Historical Society, read into the record, a statement prepared by Brigit Guertin, the Director of the Scott-Fanton Museum. Mr. Keller said the photos that were submitted will be Exhibit D and this document will be Exhibit E.

Dom Setaro, 11 Deer Hill Ave., said he lives directly across the street from this property. He thanked the Commission for taking the proper steps to reject the previous application. He said Attorney Marcus had said if the previous application was not approved, it could get worse. It has and there is no regard for this neighborhood and all the work the people have put into it. The speed bump idea is totally ridiculous as no one travels the speed limit on Deer Hill. He said the applicant's have destroyed Mr. Pane's trees right after this Commission denied the application citing the preservation of the trees as a reason to deny.

Lynn Waller, 83 Highland Ave., said she had sat through the hearings for the previous application. She added that she is concerned about the possibility of speed bumps because they could be dangerous. She mentioned that there are many other beautiful streets in Danbury that are now not so beautiful citing Farview Ave. as an example. She said if the Commission wants to see what houses in front of others or in back of existing houses, they should drive on Highland Ave.

Jane Keane, 21 Deer Hill Ave., thanked them for denying the previous application and said another big problem on this property is cars being parked along roadway in different directions. She said there have been several instances where the Police have been called out

Charles Setaro, 27 Deer Hill Ave., watched all that has gone before and appreciates what Commission has done. He said the developer's word is a big part in these kinds of proposals. He also mentioned the maintenance of an underground drainage system by previous owners.

James Nolan, Southern Blvd., said he is approximately five houses from this site. He said he spoke against the last proposal and is here tonight to do the same. He said the cars parked in

Attorney Larson spoke in rebuttal to the opposition's comments. She said the purpose of the speed bump was not to solve a sight distance problem, because there is no sight distance problem. It was proposed to solve the speeding problem on Deer Hill Ave., even though the previous application was unable to determine where on Deer Hill the speeding was done. Regarding the pruning of the tree roots, Jeff Davenport owns a professional pruning company and this was done to prune them, not to destroy them. She said they are also willing to submit his professional credentials. She said the driveway length is not an issue, the width is 20 ft. and the length is much more. She said the new application addressed all of the reasons and concerns for the previous denial. She asked that the hearing remain open to allow their engineer to respond to the Staff comments. Mr. Manuel asked the purpose of pruning the roots. Attorney Larson said it was just normal maintenance. Mrs. Emminger asked if they knew which trees these roots were from. Attorney Larson said these roots were only ones located on the applicant's property. Mrs. Emminger asked again if they definitely knew that these roots were not connected to trees on any other property. Attorney Larson again said these roots were only ones located on the 20 Deer Hill parcel. Mr. Keller asked for clarification as to whether these roots were part of the neighbor's property. Attorney Larson reiterated that the only roots that were pruned were on the applicant's property. At this point, Mr. Urice made a motion to incorporate the entire file from the previous application into the record for this application. Mr. Manuel seconded this motion and it was passed with three AYES (Mr. Keller, Mr. Manuel and Mr. Urice) and one abstention (from Mr. Deeb). Mr. Urice then made a motion to continue the public hearing. Mr. Manuel seconded the motion and it was passed unanimously.



CONTINUATION OF PUBLIC HEARING:

Susan S. & Carl D. Johnson – Application for two (2) lot re-subdivision (3.909 acres) in the RA-80 Zone and Waiver to Road Requirements in the Subdivision Regulations - “Reservoir Rd. Ext. Subdivision f/k/a Mountain Pond Heights Subdivision” – 22 Long Ridge Rd. & Reservoir Rd. (#120013) – Subdivision Code #05-01. Public hearing opened February 1, 2006 – first 35 days were up 3/8/06. Extension granted to 4/12/06.

Attorney Robin Kahn spoke in favor of this application. She said the applicant wishes to cut off a lot at the rear of property. They have been working with engineering to resolve access issues since this is at the end of Reservoir Rd. They have approval from EIC. She said the eventual conveyances will have the applicants owning this portion of the roadway. She said they have basically worked out any issues that were outstanding from the previous application of last year. Mrs. Emminger then said the Planning and Engineering comments have all been addressed and the Fire Marshal has signed off. There are no further reviews expected from any other Departments.

Chairman Finaldi asked if there was anyone to speak in opposition to this and there was no one.

Mr. Keller made a motion to close this hearing. Mr. Manuel seconded the motion and it was passed unanimously.

James Blansfield – Application for two (2) lot re-subdivision of Lot 2 (5.48 acres) in the RA-40 Zone – “The Estates at Middle River”– 49 Middle River Rd. (#E12001) – Subdivision Code #04-01. Public hearing opened March 1, 2006 – first 35 days will be up 4/5/06. Extension granted to 5/10/06.

Attorney Paul Jaber and Michael Mazzucco PE, were present to speak in favor of this. Attorney Jaber said it is within the Commission’s discretion to approve this with a joint driveway for the two lots. The applicant would prefer this as it would allow less blasting and less cuts or disturbance into the hill. The Fire Marshal has approved this plan but they have also prepared an alternate driveway plan with a driveway for each lot. Mr. Mazzucco showed the Commission this plan but said it is not their choice though. He said the Engineering Department has indicated that if it is to be a joint driveway, then they would suggest it be built to City standards. He added that the applicant feels that is feasible. Attorney Jaber then reviewed these standards. He said the reason they do not want to build a road is that they cannot comply with the grade requirements without substantial blasting. Mr. Manuel asked what the grade is at the steepest part. Mr. Mazzucco said it is 12% at the steepest point but the City standard is 10%. Mr. Urice asked if their justification is to not move a lot of material out. Attorney Jaber said it is more that they don’t want to destroy the area by blasting into the hill. Mr. Urice asked if the applicant would consider a restriction on any further sub-development of this property. Attorney Jaber said it is an impermissible to ask applicant to do that, but the applicant can volunteer it. Chairman Finaldi said the Commission needs to decide which driveway plan they want before they close the hearing.

Chairman Finaldi asked if there was anyone to speak in opposition to this application and there was no one.

Mr. Deeb made a motion to close the public hearing. There was no second so the motion was withdrawn. Mr. Manuel made a motion to continue the public hearing. Mr. Urice seconded



OLD BUSINESS FOR CONSIDERATION AND POSSIBLE ACTION:

Kenosia Plaza LLC – Request for Floodplain Permit – “Edward Ehrbar Inc.”, 40-42 Kenosia Ave. (#E17085 #E17086) – SE #641.

Mrs. Emminger said they had approved this Special Exception/Site Plan at the March 1, 2006 meeting. Mr. Manuel made a motion to approve this Floodplain Permit per the resolution dated April 3, 2006. Mr. Urice seconded the motion and it was passed unanimously.

RDB Associates – Request for Floodplain Permit – “Elmer’s Diner”, 22-24 Padanaram Rd. (#H10124 & #H10125) – SP #00-09.

Mr. Keller made a motion to table this matter until the next meeting. Mr. Urice seconded the motion and it was passed unanimously.

Franklin & Jason Neves – Request for Floodplain Permit – “Four-family Row House”, 15 West Wooster St. (#I15129) – SP #03-03.

Mrs. Emminger explained that this is the same situation as the Rogers Park Middle School Floodplain. There is no development proposed in the Floodplain, but they have to go through the review so the Commission can determine a Permit is not needed. She said the Commission has been given a resolution dated April 4, 2006

Mr. Urice made a motion that per the resolution dated April 4, 2006, a Floodplain Permit is not required. Mr. Manuel seconded the motion and it was passed unanimously.

BRT Kennedy LLC – Application for Special Exception for Apartment House/Garden Apartments/Retail Space “Kennedy Place” in the C-CBD Zone – 1 Kennedy Ave. (#H14356 & #H13289) – SE #642. *Public hearing closed March 15, 2006 – 65 days will be up 5/19/06.*

Chairman Finaldi said they had received a draft resolution dated April 4, 2006. He asked for questions or comments from the Commission members. Mr. Urice said he has concerns about the roundabout. Mr. Keller said if this is approved, it would be a major change and he would hope the developer would have done due diligence regarding it. Mrs. Emminger said they should discuss to what extent changes can be proposed after this is approved without it coming back to Commission. She said the language in Sec. 10.D.4. is not completely clear about what changes would require another public hearing versus an administrative review. She cited the Eagle Rd. Special Exception/Site Plan as an example of this type of large scale/complex project with different phases and the potential for revisions once the work has begun. Mr. Keller said he hopes the phasing works out. Mr. Urice said this project will define this area of Danbury and will make or break these kinds of projects in Danbury’s future. He added that he hopes the applicant finishes this to make Danbury proud. Chairman Finaldi said this is in compliance with Sec. 2 of (Urban Core Revitalization Plan) the Plan of Conservation & Development. Mr. Manuel asked a question about the State DOT approvals. Mrs. Emminger said the STC approval must be issued before any work is done on Main St. She added that the STC will only govern the work done in the right-of-way, but this will be discussed during the review of the phasing plan. She added that they need to make three changes to this resolution, the first being to correct an error in the acreage in the first paragraph on the first page. The second is at the bottom of page three, in item number 11, the words “if warranted” should be inserted after Blind Brook Culvert. In the very last item numbered 19, the standard comment about a five

Chairman Finaldi asked the Commission what their feelings were about public hearings for these two matters. Mr. Urice made a motion to hold public hearings for both of these applications. Mr. Keller seconded the motion and it was passed unanimously. Mrs. Emminger said she would schedule these and notify the applicants as to the public hearing date.

REFERRALS:

8-24 Referral/January 4th CC Agenda Item #10 – Carla Drive. Tabled at 1/18/06 meeting pending comments from Engineering.

Mr. Keller made a motion to table this matter. Mr. Manuel seconded the motion and it was passed unanimously.

8-24 Referral/February 7th CC Agenda Item 26 – Eagle Road Center LLC Transfer of Property to City of Danbury. Tabled at the 3/1/06 meeting for additional info.

Mr. Keller made a motion to table this matter. Mr. Manuel seconded the motion and it was passed unanimously.

8-24 Referral/February 7th CC Agenda Item 28 – Request for Sewer and Water Extension/1 Kennedy Ave. (H14356 & #H13289). This item will be tabled until decision is made on Special Exception application.

Mr. Manuel made a motion to give this a positive recommendation with the standard conditions. Mr. Urice seconded the motion and it was passed unanimously.

8-3a Referral – Petition of the City of Danbury by Dennis I. Elpern, Planning Director to Amend Secs. 3.H.3. and 4.F.3. of the Zoning Regulations. (Amend Lot Frontage Regulations and Use Regulations in the R-O Zone). Zoning Commission public hearing scheduled for April 11, 2006. Tabled at the 3/15/06 meeting.

Mr. Elpern said this petition is to clarify the definitions of lot frontage and flag lots, to add a definition of lot width and also to correct an omission of a minimum lot width in the R-O Zone. Mr. Deeb made a motion for a positive recommendation for the following reason:

- The purpose of these amendments is to help ensure buildable lots that are not too narrow for their intended use by clarifying the terms “lot frontage” and “lot width”.

Mr. Urice seconded the motion and it was passed unanimously.

8-24 Referral/March 7th CC Agenda Item #23 – Request for Sewer and Water Extension/12 Clapboard Ridge Rd. (#H12002). Tabled at the 3/15/06 meeting.

Mr. Elpern explained that this is for an expansion of Hillcroft Apartments, which already has site plan approval. Mr. Keller made a motion to give this a positive recommendation with the standard conditions. Mr. Urice seconded the motion and it was passed unanimously.

8-24 Referral/March 7th CC Agenda Item #24 – Lot Line Revision/Southern Boulevard and Brushy Hill Rd. Tabled at the 3/15/06 meeting.

Mr. Keller made a motion to combine this item with number three under Other Matters. Mr. Manuel seconded the motion and it was passed unanimously.

8-24 Referral/March 7th CC Agenda Item #26 – Request to Purchase City Property on Great Plain Rd. Tabled at the 3/15/06 meeting.

Mr. Elpern said this is a request from an abutting property owner to purchase a parcel which the City acquired through a tax foreclosure. He said based on the fact that this is an undersized lot which doesn't meet the area requirement for the RA-20 Zone, it would probably be the best thing for the neighbor to purchase it. Mr. Deeb made a motion to give this positive recommendation based on the Planning Director's report. Mr. Keller seconded the motion and it was passed unanimously.

8-24 Referral/March 7th CC Agenda Item #27 – The Reserve Conservation Easement.

Mr. Elpern explained that as part of the approval process for the Reserve, the Army Corp of Engineers and the EIC required a portion of the land be designated and maintained in its natural state as open space. This land totals 191.5 acres (out of 545.8 total acres) and is mostly comprised of wetlands and steep slopes. Under the terms of the Restriction, the land shall be maintained in perpetuity as open space. This would prohibit structures, the removal or filling of land, mining, signs, use of pesticides, change in watercourses, recreational vehicles, storage, dumping, or any other disturbance. The City would maintain the right to enforce the Restriction. Mr. Elpern said this was approved last night at the Common Council meeting pending receipt of a positive approval from the Planning Commission. Mr. Manuel asked if people will be permitted to walk on this. Mr. Elpern said yes this will be a passive recreation area. Mr. Urice made a motion to give this a positive recommendation. Mr. Manuel seconded the motion and it was passed unanimously.

8-24 Referral/March 7th CC Agenda Item #28 – Wireless Edge lease.

Mr. Elpern said the City has negotiated a lease of about 10,000 sq.ft. of land off of Peck Road to the Wireless Edge Company for the construction of a telecommunications facility for a term of five years with five renewal terms of five years each. In return, the City would receive 25% of all rental income derived from subleases and reserved space on the monopole for not less than four public service antennas for City use. Mr. Keller asked where on Peck Rd. this cell tower is being proposed for. He said he is concerned about the proximity to the residential neighborhood. Chairman Finaldi pointed out that they are not approving the tower, they are approving the lease, the tower has to go the Siting Council for approval. Mr. Deeb made a motion for a positive recommendation, but there was no second. Mr. Keller made a motion to give this a negative recommendation because it seems as though they are recommending a cell tower be put in a residential neighborhood, which is not a good idea. Mr. Manuel seconded the motion. Mr. Urice said this was the sixth choice in their list of proposed locations for this tower. Chairman Finaldi called a roll call vote and the motion for a negative recommendation was passed with four AYES (Mr. Deeb, Mr. Keller, Mr. Manuel & Mr. Urice) and one NAY (Chairman Finaldi).

8-24 Referral/March 7th CC Agenda Item #31 – Boxwood Lane Water Tank Lease Amendment.

Mr. Elpern explained that the City leases land from WCSU for a water tank on Boxwood Lane. They would like to amend the lease to add radio receivers and related equipment to the tank in order to receive radio signals for relay to the Fire Department. He then said the amendment to the lease was approved last night at the Common Council meeting subject to State and University approvals and pending receipt of a positive approval from the Planning

- 1) The land swap would be contingent upon application by GRC and approval by the Planning Commission for a cluster development under §4.A.6. of the Zoning Regulations. The resulting 5.195 acres of RA-20 land would accommodate no more than nine lots. Given the steep slopes on part of the land, a cluster development is preferred to a straight subdivision.
- 2) As a condition of the land swap and approval of the cluster application, GRC would (1) improve the intersection of Brushy Hill Road and Southern Boulevard, (2) provide a utility easement through their property to Tarrywile Park, and (3) construct a sidewalk from Cannondale Drive to Deer Hill Avenue (assuming sufficient right-of-way is available), all subject to subsequent approval by the City.

- 3) GRC would seek a variance from the ZBA to deed about 2.5 acres of land back to the City for expansion of Tarrywile Park, to include the 1.455 acres initially given by the City to GRC as part of the swap plus about one additional acre. If the variance was not approved, GRC would create a conservation easement on the land.

If all conditions were agreed to, GRC would gain up to three additional lots while the City would gain the various public improvements specified above and about 2.5 acres of land to be added to Tarrywile Park. Agreement by the City to the proposed land swap should be contingent upon subsequent approval by all parties involved. Mr. Manuel seconded the motion and it was passed unanimously. Mr. Elpern said he would prepare the report for the Common Council.

At this time (11:00 PM), Mr. Deeb excused himself and left the meeting

Request from Attorney Gary Michael to meet with the Commission informally prior to the submission of a formal application (as per Sec. 10.C.1.b. of the Zoning Regulations).

Architect Jane Didona then spoke about this matter. She said the City had approached her client and she was brought in since her firm had done the Master Plan for Tarrywile Park. She said these applicants would like to propose a very elegant nine-unit hamlet or cottage style community for this site. She said there are several benefits to this proposal, one being the continuing park space; another is that Southern Blvd. and Brushy Hill will be realigned as per recommendations of City's Transportation Plan. She said if they can get sewer and water in there, then the Castle will benefit. Attorney Gary Michael said they have met with Attorney Gerry Daly who is Chairman of the Tarrywile Park Authority and the Authority would like to see this 2.5 acres deeded to the park. It will enhance the views from the Castle and if they own it, then they can put restrictions on the usage of it. He said this would definitely benefit the City as well as the developers of this project. Mr. Elpern said a conventional subdivision might have fewer lots but would result in a greater land disturbance. Ms. Didona said angling these units would result in a much more attractive layout and part of the charm will be the smaller size.

There were three Cease & Desist Orders under Communications and under For Reference Only there were three applications for Floodplain permits and one public hearing scheduled for May 3, 2006.

At 11:15 PM, Mr. Keller made a motion to adjourn. Mr. Urice seconded the motion and it was passed unanimously.